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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------------|-----------------------|------------------|
| 09/543,949 | 04/06/2000 | Grover John Manderfield,Jr | 046223/291190 | 7906 |
| 826 | 7590 | 05/17/2005 | EXAMINER | |
| ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | ELOSHWAY, NIKI MARINA | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3727 | | |

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------------|-----------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/543,949 | MANDERFIELD,JR, GROVER JOHN |
| | Examiner Niki M. Eloshway | Art Unit 3727 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-12,14-19,21-23,31 and 33 is/are pending in the application.
 - 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-12,14-19,31 and 33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 28, 2005 has been entered.

Election/Restrictions

2. Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-12, 15-19, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al. (U.S. 5,234,126) in view of Cheng (U.S. 5,549,210) and Kester (U.S. 6,129,803). The Jonas et al. reference teaches it is well known in the art to resist container distortion by forming the container into cup or bowl shapes (col. 2 lines 52 through col. 3 line 32). Jonas et al. also discloses that the reduced sidewall height increases the strength of the container. Jonas et al. also teaches that it

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is known to blow mold a resistant container, as set forth in col. 14 lines 1-5, and that the container is multilayered, as set forth in col. 13 line 57 through col. 14 line 5. Jonas et al. does not teach the plurality of feet at the bottom of the container, and the side wall being a smooth continuous curve. Cheng teaches that it is known to provide a container with a plurality of feet at the bottom (see figures 1-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Jonas et al. with the plurality of feet of Cheng, in order to strengthen the bottom wall of the container while providing a stable support structure. Cheng discloses that the bottom structure provides "better standing capability" (col. 4 lines 60-61) and "improved stability" and "improved resistance to stress cracking" (col. 4 lines 62-64).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Jonas et al. with the side wall shape of Kester, wherein the side wall is a smooth continuous curve, in order to give the container a more decorative appearance.

5. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas et al. (U.S. 6,062,408) in view of Cheng (U.S. 5,549,210) and Kester (U.S. 6,129,803), as applied to claim 1 above, and further in view of Beck et al. (U.S. 6,062,408). The modified container of Jonas et al. discloses the claimed invention except for the lid being rotatably secured to the rim. Beck et al. teaches that it is known to form a container wherein the lid is rotatably secured to the rim. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Jonas et al. with the container being having a lid rotatably secured thereto, as taught by Beck et al., in order to properly seal the container using a well known means.

Response to Arguments

6. Applicant's arguments filed February 28, 2005 have been fully considered but they are not persuasive. Applicant argues that the "height:width ratio of the sidewall effects the container to resist deformation during a hot fill application and to resist deformation during a retort application" (page 7 of Response filed 2/28/05). The primary reference of Jonas et al. also teaches that the a height:width ratio, or draw ratio, of less than one results in a higher panel strength as compared to a container with a draw ratio above one (col. 3 lines 5-10).

7. Applicant argues that the "feet are configured to effect stability of the container on an adjacent surface..." (page 7 of Response filed 2/28/05). The secondary reference of Cheng also teaches that the footed support structure gives a container better standing capability and improved stability (col. 4 lines 60-65).

8. Applicant argues that Jonas et al. teaches away from using a cup or bowl shaped container. The examiner disagrees with this argument. Jonas et al. discloses that it is known to use cup or bowl shaped containers because of their increased panel strength. Jonas et al. states that cups and bowls with flexible closures are not easily sterilized. This is due to the flexible closures, not to the overall shape of the container. In addition, it has been held that disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

9. Regarding the Kester reference, this secondary reference is provided for the teaching of a curved sidewall. Jonas et al. teaches that irregular sidewall shapes increase the panel strength of containers and that cups or bowls can be conical, some other shape or a combination of various shapes. The test for obviousness is not whether the features of a secondary reference may be bodily

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incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

Conclusion

10. THIS ACTION IS NON-FINAL.

11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in the office on Thursdays and Fridays.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Niki M. Eloshway/nme
Patent Examiner
May 6, 2005